

## Arbitration Law Review

---

Volume 9 *Yearbook on Arbitration and Mediation*,  
Volume 9

---


Article 9

8-1-2017

# THE IRAN-UNITED STATES CLAIMS TRIBUNAL: THE EFFECT OF FUTURE AWARDS ON INTERNATIONAL TERRORISM

Casey J. College  
*Penn State Law*, [cjc331@psu.edu](mailto:cjc331@psu.edu)

Follow this and additional works at: <http://elibrary.law.psu.edu/arbitrationlawreview>

 Part of the [Comparative and Foreign Law Commons](#), [Dispute Resolution and Arbitration Commons](#), [International Law Commons](#), [Law and Society Commons](#), [Legal Remedies Commons](#), [Near and Middle Eastern Studies Commons](#), [Peace and Conflict Studies Commons](#), and the [Terrorism Studies Commons](#)

---

### Recommended Citation

Casey J. College, *THE IRAN-UNITED STATES CLAIMS TRIBUNAL: THE EFFECT OF FUTURE AWARDS ON INTERNATIONAL TERRORISM*, 9 *Arb. L. Rev.* 305 (2017).

This Student Submission - Foreign Decisional Law is brought to you for free and open access by the Law Reviews and Journals at Penn State Law eLibrary. It has been accepted for inclusion in Arbitration Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact [ram6023@psu.edu](mailto:ram6023@psu.edu).

THE IRAN-UNITED STATES CLAIMS TRIBUNAL: THE EFFECT OF FUTURE AWARDS ON  
INTERNATIONAL TERRORISM

By  
Casey J. College\*

I. INTRODUCTION: A THIRTY-FIVE YEAR OLD DISPUTE

On January 17, 2016, the United States of America (“U.S.”) landed a plane carrying \$400 million in euros, Swiss francs, and other foreign currencies in the Iranian capital of Tehran.<sup>1</sup> U.S. officials later distributed the \$400 million to Iranian officials.<sup>2</sup> The plane carried the first of three payments that were delivered over the next several weeks,<sup>3</sup> and which would fulfill the terms of a \$1.7 billion settlement resulting from negotiations carried out at the Iran-United States Claims Tribunal (“IUSCT”) in The Hague.<sup>4</sup> On the same day as the cash delivery, Iran released five United States citizens from detainment in Iran.<sup>5</sup>

---

\* Casey J. College is an Associate Editor of the Yearbook on Arbitration and Mediation and a 2018 Juris Doctor Candidate at The Pennsylvania State University Dickinson School of Law.

<sup>1</sup> Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed; Obama administration insists there was no quid pro quo, but critics charge payments amounted to ransom*, THE WALL STREET JOURNAL (Aug. 3, 2016), <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>; see also *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, FOXNEWS.COM (Sep. 7, 2016), <http://www.foxnews.com/politics/2016/09/07/us-made-1-7-billion-transfer-to-iran-in-foreign-cash-treasury-says.html>; Shawn Tully, *5 Things You Need to Know About the \$400 Million America Sent to Iran*, FORTUNE (Aug. 5, 2016), <http://fortune.com/2016/08/05/money-america-iran/?iid=sr-link1>.

<sup>2</sup> *Terror Financing Risks of America’s \$1.7 Billion Cash Payments to Iran Before the Subcomm. on Nat’l Security and Int’l Trade and Finance Before the S. Comm. on Banking, Housing, and Urban Affairs*, 114th Cong. (2016) [hereinafter *Terror Financing Risks*] (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments).

<sup>3</sup> Solomon et al., *supra* note 1; *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, *supra* note 1.

<sup>4</sup> Solomon et al., *supra* note 1; see also *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, *supra* note 1; Tully, *supra* note 1.

<sup>5</sup> Michael Pearson & Elise Labott, *5 Americans released by Iran, 4 as part of prisoner swap*, CNN (Jan. 16, 2016), <http://www.cnn.com/2016/01/16/middleeast/iran-jason-rezaian-prisoners-freed/>; see also Douglas Thomas, *US Used Arbitral Settlement as “Leverage” for Prisoners*, GLOBAL ARBITRATION REVIEW (Aug. 19, 2016), <http://globalarbitrationreview.com/article/1067644/us-used-arbitral-settlement-as-%E2%80%9Ccleverage%E2%80%9D-for-prisoners> (explaining that four prisoners were released as part of the nuclear deal, and the fifth prisoner was released under a separate agreement).

The U.S. and Iran agreed to form the IUSCT under the Algiers Accords<sup>6</sup> following the 1979 Tehran Hostage Crisis.<sup>7</sup> The IUSCT received private and national claims for one year following its formation.<sup>8</sup> The \$1.7 billion January settlement likely arose from IUSCT Case No. B1,<sup>9</sup> which relates to Foreign Military Sales Programs (“FMSPs”) between Iran and the U.S.<sup>10</sup> The settlement likely also related to enforcement of the Nuclear Deal between Iran and the U.S. in 2015, which released Iranian assets, and which greatly hindered Iran’s efforts to create nuclear weapons.<sup>11</sup> Although Iran’s capacity for nuclear warfare has been delayed, the U.S. now must encounter Iranian-backed terrorists newly supplied with \$1.7 billion worth of weaponry.<sup>12</sup>

The IUSCT continues to wade through a litany of cases originally submitted in 1981 and will deliver awards, mostly in favor of Iran, over the next several decades.<sup>13</sup> Although the Tribunal was constructed to mend wounds felt by the U.S. and Iran, the Tribunal’s future decisions may create the opportunity for new offenses, both in the Middle East and abroad. As Iran continues to bolster and supply terrorist regimes engaging in armed conflict with both the U.S. and other nations and organizations,<sup>14</sup> the Tribunal must

---

<sup>6</sup> Declaration of the Government of the Democratic and Popular Republic of Algeria, Iran-U.S., Jan. 19, 1981 [hereinafter Declaration].

<sup>7</sup> *Iran Hostage Crisis*, HISTORY.COM, <http://www.history.com/topics/iran-hostage-crisis> (last visited Oct. 15, 2016).

<sup>8</sup> Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Iran-U.S., art. 3, Jan. 19, 1981 [hereinafter Declaration Concerning Settlement].

<sup>9</sup> Bridie McAsey, *The Recent Settlement at the Iran-United States Claims Tribunal: Historical Context, Implications, and the Future - Part I*, KLUWER ARBITRATION BLOG (Mar. 18, 2016), <http://kluwerarbitrationblog.com/2016/03/18/the-recent-settlement-at-the-iran-united-states-claims-tribunal-historical-context-implications-and-the-future-part-i/>.

<sup>10</sup> Bridie McAsey, *The Recent Settlement at the Iran-United States Claims Tribunal: Historical Context, Implications, and the Future - Part II*, KLUWER ARBITRATION BLOG (Mar. 21, 2016), <http://kluwerarbitrationblog.com/2016/03/21/the-recent-settlement-at-the-iran-united-states-claims-tribunal-historical-context-implications-and-the-future-part-ii/> (describing FMSPs as national programs in which Iran placed enormous sums of money in U.S. trust funds in order to purchase U.S. weaponry).

<sup>11</sup> John Kerry, *The Case for the Nuclear Deal*, U.S. DEP’T OF STATE (July 22, 2015), <http://www.state.gov/secretary/remarks/2015/07/245158.htm>.

<sup>12</sup> Solomon et al., *supra* note 1.; *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, *supra* note 1.

<sup>13</sup> Press Release, John Kerry, Sec’y of State, U.S. Dep’t of State, Hague Claims Tribunal Settlement (Jan. 17, 2016) (on file with the U.S. Dep’t of State) (explaining that most of the remaining claims are by Iran against the U.S., requiring continuing U.S. efforts to address the claims appropriately).

<sup>14</sup> *See Fueling Terror: The Dangers of Ransom Payments to Iran Before the Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Services*, 114th Cong. (2016) [hereinafter *Fueling Terror*] (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

understand that any sum of money awarded to Iran may exacerbate Iranian support of terrorism and revolution.<sup>15</sup> Although the IUSCT is committed to resolving the rest of the claims before it, the Tribunal now finds itself in a position either to contribute to or forestall continued conflict.

## II. HISTORY OF IUSCT

Iran and the U.S. formed the IUSCT in 1981<sup>16</sup> to resolve disputes arising from the Tehran Hostage Crisis of 1979,<sup>17</sup> in which decades of Iranian frustration over U.S. involvement in Iranian affairs led to the hostile takeover of the United States Embassy in Tehran<sup>18</sup> and the capture of more than 60 U.S. citizens.<sup>19</sup> The eruption began thirty years earlier when, for fear of losing much of their control over Iranian oil, the U.S. and Great Britain successfully initiated a coup against Iran's newly elected prime minister.<sup>20</sup> The allies raised an autocratic shah who held more favorable attitudes towards the West, but the shah's reign was brutal, and the people mourned a sharp decline in their nation's economy, due largely in part to the shah's massive spending on U.S. military weapons and equipment.<sup>21</sup> The people overthrew the shah in July of 1979,<sup>22</sup> and on November 4, 1979, after the United States harbored the former shah for medical treatment, Iranian students entered the U.S. Embassy to continue ending autocratic rule in Iran and American influence in Iranian affairs.<sup>23</sup> The U.S. has not established consular relations with Iran since the crisis.<sup>24</sup>

---

<sup>15</sup> *Id.*

<sup>16</sup> Declaration, *supra* note 6.

<sup>17</sup> *Iran Hostage Crisis*, *supra* note 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Dames & Moore v. Regan*, 453 U.S. 654, 664 (1981); *The Iranian Hostage Crisis*, U.S. STATE DEP'T, OFFICE OF THE HISTORIAN, <https://history.state.gov/departmenthistory/short-history/iraniancrises> (last visited Oct. 16, 2016) (adding that, by the summer of 1980, the number of hostages was reduced to 52).

<sup>20</sup> *Iran Hostage Crisis*, *supra* note 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Swiss Confederation, *Embassy of Switzerland - Foreign Interests Section*, FEDERAL COUNSEL, <https://www.eda.admin.ch/countries/iran/en/home/representations/embassy-of-switzerland-foreign-interests-section.html>; *see also*, Bureau of Near Eastern Affairs, *U.S. Relations With Iran*, U.S. DEP'T OF STATE (Mar. 10, 2015), <http://www.state.gov/r/pa/ei/bgn/5314.htm#main-content> (stating that "[t]he

A. *Resolving the Hostage Crisis and the Resulting “Algiers Accords”*

Referring to the hostages as “victims of terrorism and anarchy,”<sup>25</sup> President Carter labeled the hostage crisis as a national emergency and a threat to national security.<sup>26</sup> President Carter instituted an executive order under the International Emergency Powers<sup>27</sup> and National Emergencies Acts,<sup>28</sup> which provided for the block of:

all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.<sup>29</sup>

Unable to resolve the hostage situation, the U.S. and Iran asked the Government of Algeria to mediate a settlement.<sup>30</sup> The U.S. and Iran entered into the resulting “Algiers Accords” on January 19, 1981.<sup>31</sup> The next day, January 20th, after 444 days of captivity, Iran released the U.S. citizens held at the embassy.<sup>32</sup>

The Algiers Accords generally provided that: (1) the U.S. would no longer involve itself in Iranian military or internal affairs; (2) the U.S. would release the Iranian assets frozen by President Carter;<sup>33</sup> (3) the U.S. and Iran would submit all future disputes to the

---

Embassy of Switzerland in Iran represents U.S. interests, and the Embassy of Pakistan in the U.S. represents Iranian interests.”).

<sup>25</sup> James E. Carter, Jr., President of the U.S., State of the Union Address (Jan. 23, 1980).

<sup>26</sup> Exec. Order No. 12,170, 31 C.F.R. § 535.203 (1980).

<sup>27</sup> 50 U.S.C. § 1701 (1977).

<sup>28</sup> 50 U.S.C. § 1601 (1976).

<sup>29</sup> 31 C.F.R. § 535.203 (prohibiting all further transfers of property between the U.S. and Iran and declaring null and void all unauthorized judgments, decrees, liens, executions, garnishments, or other judicial processes affecting property in which Iran has an interest); *see also* Exec. Order No. 12,294, 31 C.F.R. 535.210 (1981) (suspending all litigation between U.S. and Iranian nationals and governments).

<sup>30</sup> Declaration, *supra* note 6.

<sup>31</sup> *Id.*

<sup>32</sup> *Regan*, 453 U.S. at 664; *The Iranian Hostage Crisis*, *supra* note 19.

<sup>33</sup> *See* Exec. Order No. 12,277, 31 C.F.R. § 535.211 (1981) (Direction To Transfer Iranian Government Assets); Exec. Order No. 12,278, 31 C.F.R. § 535.212 (Direction To Transfer Iranian Government Assets Overseas); Exec. Order No. 12,279, 31 C.F.R. § 535.213 (Direction To Transfer Iranian Government Assets Held by Domestic Banks); Exec. Order No. 12,280, 31 C.F.R. § 535.214 (Direction To Transfer Iranian Government Financial Assets Held by Non-Banking Institutions); Exec. Order No. 12,282, 31 C.F.R. § 535.219 (Revocation of Prohibitions against Transactions Involving Iran).

IUSCT in The Hague;<sup>34</sup> (4) the U.S. would uphold U.S. federal court decisions regarding the transfer of the former Shah's belongings to Iran;<sup>35</sup> and (5) U.S. debtors would pay their Iranian creditors.<sup>36</sup> The U.S. Supreme Court upheld the Accords<sup>37</sup> under the Hostage Act, which allows the U.S. President to demand the release of citizens held by other countries and to use such means necessary, but not amounting to war, to effectuate their release.<sup>38</sup>

Operating under the rules of the United Nations Commission on International Trade Law (UNCITRAL), the IUSCT consists of nine members: three from the U.S.; three from Iran; and three neutral members chosen and agreed to by the former six.<sup>39</sup> The Tribunal was created to adjudicate only those claims raised by U.S. and Iranian nationals, and official claims between the United States and Iran,<sup>40</sup> that arose from the U.S. freeze on Iranian assets and trade, and which concerned the purchase and sale of goods and services.<sup>41</sup> Although the Tribunal received claims in only the year following the signing of the Accords,<sup>42</sup> more than 4,700 private claims were submitted by U.S. nationals, alone.<sup>43</sup>

### *B. IUSCT Case No. B1*

The January settlement for \$1.7 billion likely relates to IUSCT Case No. B1, which is the IUSCT's only remaining case involving military sales to Iran and a trust fund used for those sales.<sup>44</sup> The settlement concerns a \$400 million deposit into a Pentagon trust fund

---

<sup>34</sup> Exec. Order No. 12,294, 31 C.F.R. § 535.222 (suspending all legal claims US citizens held against Iran that were presented to the newly created Iran-United States Claim Tribunal).

<sup>35</sup> Exec. Order No. 12,284, 31 C.F.R. § 535.580 (1981) (Restrictions on the Transfer of Property of the Former Shah of Iran).

<sup>36</sup> Declaration, *supra* note 6.

<sup>37</sup> *Regan*, 453 U.S. at 686.

<sup>38</sup> 22 U.S.C. § 1732 (1989).

<sup>39</sup> Declaration Concerning Settlement, *supra* note 8, at art. 3.

<sup>40</sup> *Id.* at art. 1-2.

<sup>41</sup> *Id.* at art. 2 (further stipulating that the claims must concern the purchase and sale of goods and services).

<sup>42</sup> *Id.* at art. 3.

<sup>43</sup> *Iran-U.S. Claims Tribunal*, U.S. DEP'T. OF STATE, <http://www.state.gov/s/1/3199.htm> (last visited Nov. 4, 2016); *see also* Press Release, Kerry, *supra* note 13 (on file with the U.S. Dep't of State) (explaining that most of the 4,700 private claims were completed in the Tribunal's first 20 years).

<sup>44</sup> McAsey, *supra* note 9.

by the deposed shah for the purchase of fighter jets,<sup>45</sup> which, as a result of the Hostage Crisis, the U.S. never delivered.<sup>46</sup> Instead, the U.S. froze the deposit as required by the president's executive orders<sup>47</sup> and Iran filed a claim for their return in 1981.<sup>48</sup> Like Case No. B1, several IUSCT claims arose from foreign military sales programs ("FMSPs") between Iran and the U.S.<sup>49</sup> By 1979, Iran had an FMSP valued at \$20 billion.<sup>50</sup>

When the IUSCT turned its attention to Case No. B1,<sup>51</sup> Iran invited the Tribunal to order U.S. repayment of the \$400 million deposit, plus an additional \$10 billion in interest accrued during the course of the 35-year claim.<sup>52</sup> Believing that the Tribunal's decision was imminent and that the award to Iran would be a similarly large figure, the White House engaged Iran in mediated settlement negotiations at the IUSCT.<sup>53</sup>

On January 17, 2016, Secretary of State John Kerry announced for the first time that the U.S. would return the \$400 million held in the Trust Fund, plus \$1.3 billion in interest, calculated at a reasonable rate, which would prevent Iran from pursuing a larger award from the IUSCT.<sup>54</sup> On this same day, the U.S. delivered the first shipment of \$400 million in foreign currencies to Iran,<sup>55</sup> Iran released the five illegally detained U.S. prisoners,<sup>56</sup> and the U.S. released seven Iranians and lifted restrictions on fourteen others.<sup>57</sup> Furthermore, on the previous day, January 16, the terms of the Nuclear Deal, which Iran

---

<sup>45</sup> Zack Bequchamp, *No, Mike Pence, the US didn't give Iran a \$400 million ransom payment*, VOX (Oct. 4, 2016), <http://www.vox.com/2016/8/4/12370848/ransom-iran-400-million>; Press Release, Kerry, *supra* note 13; *see also Iran-U.S. Claims Tribunal*, *supra* note 43.

<sup>46</sup> Press Release, Josh Earnest, Press Sec'y, White House (Jan. 19, 2016) (on file with the Office of the Press Sec'y).

<sup>47</sup> *See, e.g.*, Exec. Order No. 12,170, 31 C.F.R. § 535.203 (1980).

<sup>48</sup> Press Release, Kerry, *supra* note 13.

<sup>49</sup> McAsey, *supra* note 10.

<sup>50</sup> *Id.*

<sup>51</sup> Statement of Judge Charles N. Brower, Member of the IUSCT, to the Iran-United States Claims Tribunal (on file with the IUSCT).

<sup>52</sup> Solomon et al., *supra* note 1.

<sup>53</sup> Karl Vick, *Why the U.S. Owed Iran That \$400 Million*, TIME (Aug. 5, 2016), <http://time.com/4441046/400-million-iran-hostage-history/>.

<sup>54</sup> Press Release, Kerry, *supra* note 13.

<sup>55</sup> Solomon et al., *supra* note 1.

<sup>56</sup> Pearson et al., *supra* note 5.

<sup>57</sup> Vick, *supra* note 53.

and the U.S. entered in July 2015,<sup>58</sup> were implemented, which prevented Iran's imminent access to nuclear weapons.<sup>59</sup> Under the terms of the nuclear deal, Iran regained access to certain funds which had been frozen under nuclear-related sanctions<sup>60</sup> and the U.S. significantly postponed Iran's nuclear armament, which would greatly temper Iran's unfavorable "regional actions."<sup>61</sup>

### C. *The Evolving Relationship Between the White House and the IUSCT*

Although forthcoming about the amount of the settlement, the White House failed to include that the payments were made in cash or that the first payment coincided with the release of the hostages, which were instead revealed almost seven months later by the Wall Street Journal.<sup>62</sup> President Obama confirmed the secret details of the settlement two days after the Wall Street Journal published the article,<sup>63</sup> resulting in Republican outrage and indignation.<sup>64</sup> Obama nevertheless claimed that the White House was open about the settlement in January, and that the cash payment method was omitted simply because the

---

<sup>58</sup> Kerry, *supra* note 11.

<sup>59</sup> John Kerry, Sec'y of State, Remarks on Implementation Day (Jan. 16, 2016) (on file with the U.S. Dep't of State) (stating that each of Iran's pathways to nuclear weapon material has been shut down); *see also The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon*, THE WHITE HOUSE, <https://www.whitehouse.gov/issues/foreign-policy/iran-deal> (last visited Nov. 4, 2016) (explaining that the nuclear deal prevents Iran from creating a nuclear bomb and extends the amount of time Iran would need to create one should they choose to breach the agreement).

<sup>60</sup> Press Release, Barack Obama, President of the U.S., Statement by the President on Iran (Jan. 17, 2016) (on file with the White House) (stating that Iran would regain access to money that had been frozen); *The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon*, *supra* note 59.

<sup>61</sup> Kerry, *supra* note 58; *see also* Press Release, Josh Earnest, Press Sec'y, White House (Jan. 15, 2016) (on file with the Office of the Press Sec'y) (stating that the U.S. is concerned about the possibility of Iran developing nuclear weapons because "in so many other areas Iran is a pretty bad actor."); Press Release, Obama, *supra* note 60 (explaining that even if the U.S. prevents Iran from possessing nuclear weapons, Iran still sponsors terrorism, has poor rhetoric towards Israel, and continues to finance Hezbollah).

<sup>62</sup> Solomon et al., *supra* note 1.

<sup>63</sup> *Id.*; Press Release, Barack Obama, President of the U.S., Press Conference by the President After Meeting with National Security Officials (Aug. 4, 2016) (on file with the White House) (explaining that Kerry had the opportunity to "clear accounts" on a number of different issues at once).

<sup>64</sup> Press Release, Paul Ryan, Speaker of the House, Statement on the Administration's Reported Ransom Payment to Iran, (Aug. 3, 2016) (on file with the Speaker of the House) (claiming that the administration misled Americans about the dangers of the deal and calling for public disclosure of why the U.S. went to such lengths to "accommodate the world's leading sponsor of terrorism."); *see also* Letter from Ed Royce, Congressman, House Foreign Affairs Committee, to John F. Kerry, Secretary of State, U.S. Dep't of State (Feb. 3, 2016) (on file with the Foreign Affairs Committee) (indemnifying the administration's efforts to hide the facts of the accommodation to Iran, which put "[h]undreds of million in the pockets of a terrorist regime," resulting in a more dangerous Middle East and "put[ting] more American lives in jeopardy.").



White House did not believe it was worthy of mention to the public.<sup>65</sup> Proponents of the settlement argue that the cash payment may have been useful in immediately bolstering Iran's economy,<sup>66</sup> but the payment has also been characterized as a Hague-approved ransom payment in violation of the U.S. policy forbidding such negotiations with terrorists.<sup>67</sup> The cash payment may have helped implement the nuclear deal, but the U.S. now faces a new problem: Iranian armament of terrorist soldiers who the U.S. and many of its allied countries are fighting, and who are newly capable of purchasing weapons and supplies with \$1.7 billion in cash, courtesy of the U.S. government.<sup>68</sup>

Over the past 35 years, the Tribunal has successfully waded through and resolved private claims, and awarded more than \$2.5 billion to U.S. nationals and companies.<sup>69</sup> The Tribunal has far to go, however, as there are many official claims between the U.S. and Iran yet to be resolved, each of which may take up to five years.<sup>70</sup> Iran initiated most claims against the U.S.<sup>71</sup> In particular, the \$1.7 billion settlement negotiated at the Hague, which includes the \$400 million the U.S. delivered to Tehran in January 2016, is but a small part of the IUSCT's state-to-state resolution agenda, which the IUSCT is currently addressing now that all individual cases have been finalized.<sup>72</sup> Many of the remaining claims are volatile and may negatively impact diplomatic relations between the two countries.<sup>73</sup> Thus, the IUSCT now finds itself in a precarious position where its decisions and awards can disrupt international affairs in one of the most unstable regions in the world.

---

<sup>65</sup> Press Release, Obama, *supra* note 63.

<sup>66</sup> Vick, *supra* note 53.

<sup>67</sup> See John Bellinger, *U.S. Settlement of Iran Claims Tribunal Claim was Prudent but Possible Linkage to release of Americans Is Regrettable*, LAWFARE (Jan. 18, 2016), <https://www.lawfareblog.com/us-settlement-iran-claims-tribunal-claim-was-prudent-possible-linkage-release-americans-regrettable>.

<sup>68</sup> Solomon et al., *supra* note 1.; *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, *supra* note 1.

<sup>69</sup> *The Iran-U.S. Claims Tribunal*, *supra* note 43; Press Release, Kerry, *supra* note 13.

<sup>70</sup> Statement of Judge Charles N. Brower, *supra* note 51 (stating that the Tribunal hears these cases one at a time and predicting that each will take five years due to the work involved in preparation, hearings, deliberations, and issuing an award).

<sup>71</sup> Press Release, Kerry, *supra* note 13.

<sup>72</sup> Statement of Judge Charles N. Brower, *supra* note 51.

<sup>73</sup> McAsey, *supra* note 10 (citing as an example, Case No. A30, which is partially based on allegations that the U.S. breached the Algiers Declarations by authorizing covert CIA operations).

### III. REPAYMENT V. RANSOM AND THE EFFECT ON AMERICA'S IMAGE

#### A. *Cash Delivery: Practical Necessity or Fungible Failure?*

The United States has a long-standing policy against negotiating the return of hostages for “ransom, prisoner releases, policy changes, or other acts of concession,” which is meant to “remov[e] a key incentive for hostage-takers to target U.S. Nationals,” and help deny “terrorists and other malicious actors the money, personnel, and other resources they need to conduct attacks . . .”<sup>74</sup> Indeed, similar negotiation attempts have failed, perhaps most notably during President Reagan’s “Arms for Hostages” scheme, in which the President authorized the sale of guided missiles to Iran, who agreed to order the release of American hostages from certain terrorist groups, but then captured three more U.S. citizens soon after the U.S. offloaded the shipment.<sup>75</sup> Today, the U.S. again feels the effects of its error, as Iran has seized at least three more hostages since the \$1.7 billion delivery.<sup>76</sup>

After reaffirming the White House’s official stance against paying ransom for hostages,<sup>77</sup> Obama explained that the cash delivery was not unusual, but necessary to comply with the United States’ own financial sanctions against Iran.<sup>78</sup> The U.S. cannot write Iran a check or wire money to Iran because Iran is isolated from the international finance system<sup>79</sup> and the U.S. has no banking relationship with the country.<sup>80</sup> However, the

---

<sup>74</sup> Press Release, The White House, Presidential Policy Directive - Hostage Recovery Activities, PPD-30 (June 24, 2016) (on file with the Office of the Press Sec’y).

<sup>75</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

<sup>76</sup> Press Release, Sen. Mark Kirk, Kirk Statement on More Proof that White House Made \$400 Million Cash Ransom Payment to Iran (Aug. 18, 2016) (on file with the author); *see also* Press Release, Rep. Doug Lamborn, U.S. Sent Cash to Iran as Americans Were Freed (Aug. 3, 2016) (on file with the author) (explaining that Iran is holding several Westerners who were detained after this payment).

<sup>77</sup> Press Release, Obama, *supra* note 63.

<sup>78</sup> *Obama Says \$400 Million To Iran Not “Nefarious” Ransom Deal*, RFE/RL (Aug. 5, 2016), <http://www.rferl.org/a/obama-says-400-million-payment-iran-not-ransom-deal-republicans-charge/27901368.html>; *Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network).

<sup>79</sup> *US made \$1.7 billion transfer to Iran in foreign cash, Treasury says*, *supra* note 1 (citing a Treasury spokesperson, who said the cash payments were necessary because of the “effectiveness of U.S. and international sanctions”).

<sup>80</sup> *Obama Says \$400 Million To Iran Not “Nefarious” Ransom Deal*, *supra* note 78; *see also Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network) (stating that “Iran poses a special threat to the global financial system” and that in the early 2000s, the U.S. and foreign nations “began actively cutting Iranian banks out of the global financial markets and limiting Iran’s ability to use the international financial system to finance its proliferation and terrorist activities.”).

State Department's Office of the Historian could not offer any similar examples<sup>81</sup> and the entire negotiation has been an experimental failure. If the White House had chosen to, it could have delayed any Tribunal judgment for years simply by participating fully in the Tribunal process, thereby delaying payment until a time, potentially, when Iran no longer sponsors the export of revolution and terrorism.<sup>82</sup> Under the U.S. sanctions preventing U.S. dollar payments to Iran, the payments could have been leveraged against future terrorism financing, rather than presented to Iran as a \$1.7 billion reward for returning Americans that Iran illegally detained to begin with.<sup>83</sup>

Delivering fungible cash also allows Iran to make other government funds available for sponsoring terrorism.<sup>84</sup> For example, Iran may use the funds to continue destabilizing the Middle East, to assault Syria, to fund militias in Iraq and Yemen, to invade Israel, or to buy advanced weaponry with which to challenge the US.<sup>85</sup> Indeed, "[i]n May, Iran's Guardian Council allocated an additional \$1.7 billion - the same as the total cash payment - to the military for the upcoming annual budget that was finalized in August."<sup>86</sup> It seems that the \$1.7 billion cash payment bolstered the country's trade and likely made the Islamic Revolutionary Guard Corps' ability to finance and conduct terrorism easier,<sup>87</sup> and the United States "bent over backwards" to deliver it.<sup>88</sup> In other words, Iran's goal to destabilize the Middle East and undermine U.S. national security interests was likely made easier by the U.S. provision of hard currency immediately usable to purchase guns and other armaments.<sup>89</sup>

---

<sup>81</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute); Press Release, Josh Earnest, Press Sec'y, White House (Aug. 22, 2016) (on file with the Office of the Press Sec'y).

<sup>82</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

<sup>83</sup> *Id.*

<sup>84</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments).

<sup>85</sup> Press Release, Sen. John McCain, McCain on Obama Admin Sending \$400M to Iran (Aug. 3, 2016) (on file with the author).

<sup>86</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments).

<sup>87</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

<sup>88</sup> Press Release, Rep. Tom MacArthur, MacArthur Responds to \$400 Million Secret Airlift for Iran (Aug. 3, 2016) (on file with the author).

<sup>89</sup> Press Release, Sen. McCain, *supra* note 85.

B. *Separate and Successful Negotiations or Unnecessary Debacle?*

Lawmakers additionally fear that Iran's compliance with the terms of the nuclear deal was ensured only by the U.S. concession to deliver the payments in cash.<sup>90</sup> Although the Obama administration claims that each negotiation was conducted separately,<sup>91</sup> Iran demanded the return of the \$400 million shortly before the nuclear deal negotiations ended,<sup>92</sup> and the U.S. government confirmed delaying the delivery of the first payment, as leverage, until Iran released the American prisoners.<sup>93</sup> At the same time, the U.S. also released seven Iranians and lifted restrictions on fourteen others.<sup>94</sup> This series of exchanges does not depict separately held negotiations,<sup>95</sup> but raise the very real possibility that Obama acceded to a \$400 million demand for American prisoners and an uneven prisoner exchange.<sup>96</sup> Even more troubling is that Iran has taken the official position that the \$400 million payment was made in exchange for the prisoners, and that the U.S. was forced to "succumb" to the will of Iran by lifting the nuclear sanctions, removing bars on trade and economics, and releasing blocked assets.<sup>97</sup> In fact, Iranian Brigadier General Mohammad Reza Nadqi claims that the money was a payment for "the U.S. spy."<sup>98</sup>

---

<sup>90</sup> See *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments).

<sup>91</sup> Press Release, Obama, *supra* note 63.

<sup>92</sup> Solomon et al., *supra* note 1 (citing State Department spokesperson, John Kirby, who said that the negotiations were separate from the hostage discussions, which were conducted by different teams on each side, "including, in the case of The Hague claims, by technical experts involved in these negotiations for many years."); Tully, *supra* note 1.

<sup>93</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments); see also *US-Iran Financial Settlement Controversy*, IRAN PRIMER, <http://iranprimer.usip.org/blog/2016/jan/17/kerry-us-iran-financial-dispute-settled> (last updated Aug. 18, 2016) (quoting Jon Kirby, who said that the U.S. deliberately leveraged the moment to finalize both issues at once).

<sup>94</sup> Vick, *supra* note 53.

<sup>95</sup> Press Release, Sen. Marco Rubio, Rubio to Introduce Legislation Stopping Obama's Ransom Payment to Iran (Aug. 3, 2016) (on file with the author).

<sup>96</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments).

<sup>97</sup> *Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network); Solomon et al., *supra* note 1; see also *Iranian Foreign Ministry Statement on JCPOA Implementation Day and New US Sanctions*, MINISTRY OF FOREIGN AFFAIRS, ISLAMIC REPUBLIC OF IRAN (Jan. 18, 2016), <http://en.mfa.ir/index.aspx?fkeyid=&siteid=3&pageid=1997&newsview=375911> (asserting that the lift is an implicit admission that the U.S. policy of sanctions has failed).

<sup>98</sup> Karoun Demirjian, *Republicans Call for Inquiry into Whether Obama Paid 'Ransom' to Iran*, WASH. POST (Jan. 22, 2016), <https://www.washingtonpost.com/world/national-security/republicans-calling-for-inquiry->

Proponents of the settlement argue that “[the U.S.] gave away nothing of value that was ours; [the U.S.] simply returned a relatively small part of what was theirs . . .”<sup>99</sup> In addition, and with respect to future actions by the Tribunal and the impact those actions may have on diplomatic relations, one former State Department legal advisor vehemently argued that these settlements do not confirm that “the United States was negotiating a settlement for hostages or that anyone is giving them more money than they deserve.”<sup>100</sup> Furthermore, proponents argue that describing the settlement as a ransom is inconsistent with the history of Claim No. B1 and “its arbitration over the course of several decades in a forum specifically designated for that purpose.”<sup>101</sup> Secretary Kerry instead depicted the settlement as a victory, one which has saved the U.S. taxpayer billions of dollars.<sup>102</sup>

However, President Obama confirmed that conversations concerning the settlement agreement, the nuclear deal, and the American hostages overlapped,<sup>103</sup> and that Secretary Kerry merely took advantage of the circumstances to resolve several issues at once.<sup>104</sup> But many find this claim “unbelievable and disingenuous,” as well as contrary to Iran’s statements.<sup>105</sup> Under the definition of “ransom,”<sup>106</sup> the January payment fits the mold, perfectly.<sup>107</sup> In addition, contrary to Kerry’s assurance that the settlement saved the U.S. taxpayers a large sum of money, the settlement seems to have been no great fiscal victory for United States citizens. The Congressional Research Service revealed that the Tribunal has never awarded compound interest similar to what Iran was seeking, but has implemented a ten percent interest rate to prevent compensation disproportionate to the

---

[into-whether-obama-paid-ransom-to-free-american-prisoners/2016/01/22/ce45a1e6-a806-4134-9327-88657731e6c5\\_story.html](http://into-whether-obama-paid-ransom-to-free-american-prisoners/2016/01/22/ce45a1e6-a806-4134-9327-88657731e6c5_story.html).

<sup>99</sup> *Terror Financing Risks*, *supra* note 2 (statement by Suzanne Maloney, Center for Middle East Policy, The Brookings Institute).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Kerry, *supra* note 13.

<sup>103</sup> Press Release, Barack Obama, *supra* note 63.

<sup>104</sup> *Id.* (stating that the U.S. pushed hard in getting the American hostages out because the U.S. was already in conversation with Iran).

<sup>105</sup> Press Release, Sen. Rubio, *supra* note 95.

<sup>106</sup> *Ransom*, BLACK’S LAW DICTIONARY (4th ed. 1996) (“1. To obtain the release of a captive by paying a demanded price.”).

<sup>107</sup> Press Release, Rep. Bradley Byrne, Byrne Votes to End Ransom Payments to Iran (Sep. 23, 2016) (on file with the author); Press Release, Sen. McCain, *supra* note 85.

loss.<sup>108</sup> Under this calculation, the U.S. would have owed Iran around \$1.8 billion, a mere \$100 million more than the \$1.7 billion settlement amount.<sup>109</sup>

#### IV. IUSCT'S FUTURE

The IUSCT must recognize and be cognizant of the possibility that any sum awarded to Iran may contribute to violence against Americans and others, both in the Middle East and throughout the world. The IUSCT has a great deal more work to do as the \$1.7 billion settlement is a small part of the IUSCT's state-to-state resolution agenda.<sup>110</sup> In fact, the settlement is only a relatively small part of Case No. B1, which is the single biggest litigation the U.S. has ever been involved in.<sup>111</sup> In addition, many of the remaining state-to-state claims, such as B1, are volatile, and resolution of such claims could affect, or even harm, diplomatic relations between the U.S. and Iran.<sup>112</sup> The IUSCT has a duty, therefore, to use extreme caution when deciding how much an award should be, and when deciding how and/or when the award must be transferred. If the IUSCT were to delay the award or make the transfer conditional on certain uses the award may be put towards, the IUSCT may be able to keep much of the sum away from Iran's war funds.

##### A. *Future Hostages and Payments of IUSCT Awards*

The IUSCT is now responsible for awarding billions of dollars to a terrorism-sponsoring state. Because the Tribunal has kept relatively quiet regarding the state-to-state claims, "[t]here's very little awareness . . . of the risks these cases pose to the U.S. (sic) . . ." <sup>113</sup> But "[h]undreds of millions in the pockets of a terrorist regime means a more dangerous region, period. And paying ransom only puts more American lives in jeopardy." <sup>114</sup> Iran viewed the exchange as a success,<sup>115</sup> and is therefore encouraged to

---

<sup>108</sup> Letter from Rep. Edward R. Royce, Chairman, Committee on Foreign Affairs, to John F. Kerry, Sec'y of State (June 1, 2016) (on file with the U.S. House of Representatives).

<sup>109</sup> *Id.*

<sup>110</sup> Statement of Judge Charles N. Brower, *supra* note 51.

<sup>111</sup> Sebastian Perry, *Children of the Revolution*, GLOBAL ARBITRATION REVIEW (Apr. 27, 2012), <http://globalarbitrationreview.com/article/1031294/children-of-the-revolution>.

<sup>112</sup> McAsey, *supra* note 10.

<sup>113</sup> Perry, *supra* note 111.

<sup>114</sup> Press Release, Rep. Edward R. Royce, Chairman, Foreign Affairs Committee, Chairman Royce on Obama Admin Sending Plane Full of Cash to Iran (Aug. 2, 2016) (on file with the Foreign Affairs Committee).

<sup>115</sup> Press Release, Rep. Byrne, *supra* note 107; *see also Basij Commander: US Bought Freedom of Spies by Releasing \$1.7 bln of Iran's Frozen Assets*, FARS NEWS AGENCY (Jan. 20, 2016),

attempt a repeat of the feat to extort more cash from the U.S. Indeed, three Americans, at least, have been illegally detained since the payments were made.<sup>116</sup> As occurred in January, Iran can deliberately keep control of the hostages until payment is on the ground.<sup>117</sup>

Admittedly, the Tribunal has never awarded Iran a payment similar to the one made in January. Furthermore, each of the B class cases is expected to take up to five years, and with an estimated 14 cases remaining, the Tribunal may take up to 70 years to clear its docket.<sup>118</sup> As such, the U.S. has plenty of time to develop a solution to the payment problem. Congress recently introduced two bills to combat future payments similar to the January settlement: the Judgment Fund Transparency and Terrorism Financing Prevention Act,<sup>119</sup> which provides for greater “transparency and accountability for questionable taxpayer-funded payments to foreign nations, like Iran,”<sup>120</sup> and the Prohibiting Future Ransom Payments to Iran Act,<sup>121</sup> which prevents further cash payments to Iran until “the President certifies Iran is not a primary money laundering concern or a state sponsor of terrorism.”<sup>122</sup> The latter bill also “increases transparency and reporting requirements related to settlements and judgments under the Iran-United States Claims Tribunal.”<sup>123</sup> These bills, however, may require that future IUSCT-awarded payments to Iran be delayed or altered due to the non-existent banking relationship between the two countries.<sup>124</sup> As such, the new laws may require the U.S. to disobey the IUSCT’s decisions in violation of the Algiers Accords.

The remaining IUSCT cases seem not to concern *whether* to award Iran money, but, rather, how much of Iran’s confiscated property to return and at what interest rate. Two other claims concerning the return of confiscated property have been settled under Case

---

<http://en.farsnews.com/newstext.aspx?nn=13941030001016> (claiming the \$1.7 billion “had nothing to do the [nuclear] negotiations and was the . . . price that America paid to free its spies.”).

<sup>116</sup> Press Release, Sen. Kirk, *supra* note 76.

<sup>117</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments); *US-Iran Financial Settlement Controversy*, *supra* note 93.

<sup>118</sup> McAsey, *supra* note 10.

<sup>119</sup> Judgment Fund Transparency and Terrorism Financing Prevention Act, S. 3213, 114th Cong. (2016).

<sup>120</sup> Letter from Sen. James Lankford to Barack Obama, President of the U.S. (Sep. 8, 2016) (on file with the U.S. Senate).

<sup>121</sup> Prohibiting Future Payments to Iran Act, H.R. 5931, 114th Cong. (2016).

<sup>122</sup> Press Release, Rep. Kevin Cramer, Cramer: Iran, Ukraine Bills Bring Transparency, Accountability (Sep. 23, 2016) (on file with the author).

<sup>123</sup> *Id.*

<sup>124</sup> *Obama Says \$400 Million To Iran Not “Nefarious” Ransom Deal*, *supra* note 78; *Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network).

No. B1.<sup>125</sup> Award No. 452-B1-FT,<sup>126</sup> in which the U.S. sent Iran a check for \$7.8 million, and Award No. 525-B1-FT, in which Iran received \$278 million; \$18 million through international banking and the other \$270 million through a series of checks.<sup>127</sup> Of course, the U.S. is now prevented from writing checks to Iran as international banking channels have been terminated,<sup>128</sup> but the U.S. will almost certainly owe Iran a large portion of the outstanding claims.<sup>129</sup> How and when the payment(s) will be delivered depends in large part upon the Tribunal. If the Tribunal awards or encourages settlement of even one-fifth of the requested funds, as was settled upon in this case, the IUSCT may be responsible for placing additional billions of dollars in the hands of terrorists.

### *B. Future Negotiations and Concessions*

Although the Tribunal is unlikely to resolve all of the state-to-state claims in the near future, the U.S. may benefit from an expeditious resolution with Iran of the final claims before the Tribunal can order substantial payments to Tehran.<sup>130</sup> The Tribunal has dealt with “highly politicized and potentially volatile issues,”<sup>131</sup> and its history has been turbulent. The vast majority of the individual cases filed with the Tribunal were on behalf of U.S. citizens against Iranians, and the Iranian respondents lost often.<sup>132</sup> The Tribunal, itself, has not always worked amicably with each other. As former president of the tribunal, Karl-Heinz Böckstiegel has explained, “There was a lot of political aggression from both the US and Iranian sides, and the third-country members were caught in the middle.”<sup>133</sup> These claims have been before the Tribunal for 35 years now, and the passage of time causes evidence to be lost and witnesses memories to fade.<sup>134</sup> An expeditious resolution

---

<sup>125</sup> McAsey, *supra* note 10.

<sup>126</sup> Iran Award 451-B1-FT (Iran-U.S. Cl. Trib.), 1989 WL 663896, at \*1.

<sup>127</sup> Iran v. U.S., 27 Iran-U.S. Cl. Trib. Rep. 282 (1991).

<sup>128</sup> *Obama Says \$400 Million To Iran Not “Nefarious” Ransom Deal*, *supra* note 78; *Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network).

<sup>129</sup> Press Release, Kerry, *supra* note 13 (explaining that most of the remaining claims are by Iran against the U.S., requiring continuing U.S. efforts to address the claims appropriately).

<sup>130</sup> *Fueling Terror*, *supra* note 14 (statement by Suzanne Maloney, Deputy Director, Foreign Policy) (fearing, as the White House did, that the IUSCT will award much larger sums to Iran than the U.S. can negotiate for).

<sup>131</sup> McAsey, *supra* note 10.

<sup>132</sup> Perry, *supra* note 111 (citing that 98% of the individual cases were against Iran).

<sup>133</sup> *Id.*

<sup>134</sup> McAsey, *supra* note 10.



may solve some of these difficulties, but the turbulent nature of the Tribunal raises cause for concern.

The Iranian government believes that the settlement was a great victory against the U.S.<sup>135</sup> So long as the U.S. continues to reduce sanctions and improve Iran's economy by releasing Iranian assets, which will inevitably lead to more funds for terrorist organizations,<sup>136</sup> any additional award or settlement agreed upon by the Tribunal under similar circumstances or reflecting similar amounts, will depict the U.S. as weak and lacking the vigilance necessary to counter the terrorist threat that Iran poses to the United States and our allies in the Middle East.<sup>137</sup> Iran's recent success at the Tribunal will most likely encourage the country to utilize even harder negotiation tactics in the future and demand additional cash payments. Iran has also shown a renewed boldness in their demands from the U.S. Since receiving the settlement payments, Iran's former president Mahmud Ahmadinejad has demanded that more of the money in frozen U.S. accounts be returned to Iran, "includ[ing] \$2 billion that the Supreme Court ruled should go to American victims of Iranian-backed terrorism."<sup>138</sup> Iran, therefore, will likely remain committed to the Tribunal, and use potential awards of large figures to negotiate further cash settlements with the U.S.<sup>139</sup>

By encouraging the January settlement, the USCT simply followed through with its mission to expeditiously and inexpensively resolve the claims resulting from the Hostage Crisis,<sup>140</sup> which have been with the Tribunal for 35 years.<sup>141</sup> Indeed, the United States initiated the settlement negotiations after fearing an unreasonably high award from the Tribunal,<sup>142</sup> and is ultimately responsible for its terms. Nevertheless, the IUSCT did affect a cash settlement that may very well have placed a great deal of money in terrorist hands, and so must consider its role in the U.S. and Iran's continued bartering of concessions.

---

<sup>135</sup> Press Release, Rep. Byrne, *supra* note 107.

<sup>136</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

<sup>137</sup> Letter from Ed Royce, *supra* note 64.

<sup>138</sup> *Terror Financing Risks*, *supra* note 2 (statement by Eric Edelman, Counselor, Center for Strategic and Budgetary Assessments); Louis Nelson, *Former Iranian president to Obama: Return seized \$2 billion*, POLITICO (Aug. 8, 2016), <http://www.politico.com/story/2016/08/mahmoud-ahmadinejad-obama-2-billion-226783>; *Iran officially sues U.S. for 'asset verdict'*, MEHR NEWS AGENCY (June 16, 2016), <http://en.mehrnews.com/news/117401/Iran-officially-sues-US-for-asset-verdict>.

<sup>139</sup> Perry, *supra* note 111.

<sup>140</sup> Declaration, *supra* note 6.

<sup>141</sup> *Iran-U.S. Claims Tribunal*, *supra* note 43.

<sup>142</sup> Vick, *supra* note 53.

## V. CONCLUSION AND RECOMMENDATION

For the past 35 years, the IUSCT has diligently coursed through several thousand cases, but the real challenges are yet to come. Billions of dollars in claims currently sit before the Tribunal, most of which were initiated by Iran against the U.S. These claims could be used to finance terrorist factions and destroy innocent lives around the world. As the IUSCT moves forward, not only must the Tribunal remain cognizant of the diplomatic relations between the U.S. and Iran, the Tribunal must also bear in mind the potential use to which any awarded funds may be put.

Iran's continued support of terrorism has expanded the scope of IUSCT's responsibility and liability to include protecting the United States and other potential victims in the Middle East and abroad. So long as Iran continues supporting terrorism, a portion, or the entirety, of any sum the IUSCT awards Iran could be used to finance further loss of life and further hostage-taking. The Tribunal must operate under the arbitration rules of UNCITRAL, but may modify the rules to ensure that the Algiers Accords are carried out.<sup>143</sup> Under the Tribunal's modified rules, it must "decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account . . . changed circumstances."<sup>144</sup> The circumstances of claims such as B1 have drastically changed since 1981. Iran no longer purchases weapons from the U.S. as there are no banking relations between the two countries.<sup>145</sup> The return of any FMSP money, therefore, can not be used in the same capacity it was before, and Iran now appears to be using the money to finance terrorist organizations with which the U.S. continues to do battle.<sup>146</sup>

The Accords provide that the Tribunal's decisions and awards are final and binding, and without any binding limits on the Tribunal's power to make decisions and awards, the Tribunal is free to delay its decision and to order the U.S. to delay delivery.<sup>147</sup> The only limits to the Tribunal's power in resolving these claims are the limits the Tribunal places on itself. Until Iran proves that any fungible sums awarded to the country will not be used to support terrorism, the Tribunal is entirely free to deny Iran the opportunity to do so. Alternatively, the Tribunal may condition the award on Iran's use of the money to fund pre-determined, peaceful projects, and may impose sanctions on Iran through future awards

---

<sup>143</sup> Declaration Concerning Settlement, *supra* note 8, at art. 3.

<sup>144</sup> *Id.* at art. 5.

<sup>145</sup> *Obama Says \$400 Million To Iran Not "Nefarious" Ransom Deal*, *supra* note 78; *Fueling Terror*, *supra* note 14 (statement by Eric B. Lorber, Senior Assoc., Financial Integrity Network) (stating that "Iran poses a special threat to the global financial system" and that in the early 2000s, the U.S. and foreign nations "began actively cutting Iranian banks out of the global financial markets and limiting Iran's ability to use the international financial system to finance its proliferation and terrorist activities.").

<sup>146</sup> *Fueling Terror*, *supra* note 14 (statement by Michael Rubin, Resident Scholar, American Enterprise Institute).

<sup>147</sup> Declaration Concerning Settlement, *supra* note 8, at art. 4-5 (reasoning that the Tribunal's power to decide cases based on the law the Tribunal chooses to apply, combined with the finality of the Tribunal's decisions, create opportunities for the Tribunal to delay arbitral and payment operations).

when Iran fails to comply. The Tribunal now faces a tremendous responsibility, but it certainly has the tools and capacity to succeed.